



INTERIOR BOARD OF INDIAN APPEALS

Melvin Brewer v. Aberdeen Area Director, Bureau of Indian Affairs

29 IBIA 37 (01/17/1996)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

MELVIN BREWER,
Appellant

v.

ABERDEEN AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 96-31-A
:
:
: January 17, 1996

On December 15, 1995, the Board of Indian Appeals received a notice of appeal from Melvin Brewer, pro se. Appellant states that he is appealing under 25 CFR 2.8, the provision in 25 CFR Part 2 which concerns appeals from the inaction of Bureau of Indian Affairs (BIA) officials. Despite his citation of section 2.8, however, appellant makes it clear in the text of his notice of appeal, and the documents attached thereto, that he is actually seeking review of BIA's attempts to collect a debt from him under the Debt Collection Act of 1982.

On March 27, 1995, the Acting Aberdeen Area Director, BIA, (Area Director), wrote to appellant, stating that BIA intended to initiate collection of a debt in the amount of \$120,557, a debt which apparently resulted from a delinquent guaranteed loan. The letter informed appellant that, under authority of 5 U.S.C. § 5514, BIA intended to collect the debt by means of deductions from appellant's salary as an employee of the Indian Health Service. The letter stated further:

The deduction will be exercised each biweekly paycheck in the amount of fifteen percent (15%) of your disposable pay beginning the pay period following 30 days from your receipt of this letter and continue until the entire debt is paid in full or other satisfactory means are approved for repayment of the debt.

In addition, the following rights and regulations will apply:

1. You have the right to inspect and copy Government records relating to your loans or, if you or your representative cannot personally inspect the records, to request and receive a copy of such records.

2. You have the opportunity, subject to BIA approval, to establish a voluntary repayment schedule of the debt in lieu of offset. Any agreement must be in writing, signed by the debtor, and the BIA Area Director and documented in the BIA loan file.

3. You have the right to a hearing conducted by an official not directly involved in the administration of the loan if a petition is filed in writing at the Agency office within 15 days from receipt of this letter. * * *

4. You have the right to request a Waiver or Compromise of the Debt under 45 CFR [Part] 30, Subpart C.

It appears that appellant submitted a request for waiver or compromise but was not satisfied with the BIA response.

Procedures for challenging a debt collection action are set out in 5 U.S.C. § 5514 and were described in the Area Director's letter. The statute provides a Federal employee with, inter alia, a right to a hearing in a case where a Federal agency seeks to collect a debt from the employee's salary. The Area Director informed appellant of his right to request a hearing.

The appeal regulations in 25 CFR Part 2, including the provisions for appeals to this Board, do not apply "if any other regulation or Federal statute provides a different administrative appeal procedure applicable to a specific type of decision." 25 CFR 2.3(b). 5 U.S.C. § 5514 provides a different appeal procedure applicable to BIA's decision to collect a debt from appellant. Therefore, this appeal does not fall under 25 CFR Part 2.

Moreover, this appeal does not arise from a BIA decision issued under 25 CFR Chapter I and has not been referred to the Board by the Secretary or the Assistant Secretary - Indian Affairs. Accordingly, the Board lacks jurisdiction over the appeal. 43 CFR 4.1(b)(2), 4.330(a).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the secretary of the Interior, 43 CFR 4.1, this appeal is docketed but is dismissed for lack of jurisdiction.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge